

- 3 -

We have carefully analyzed population and registered voter data for each of the proposals, as well as citizenship data, election returns, and statistical analyses by the city's experts and others. We note that the city has acknowledged that there was virtually no minority input in the development and selection of any of the redistricting proposals submitted for our review. Furthermore, with regard to the quadrant component, the information available to us suggests that these regional districts are, in many respects, the functional equivalent of the at-large council positions that have been found to be racially discriminatory, and we are not persuaded that the quadrant districts, as submitted, remedy the dilution occasioned by at-large elections in Dallas.

With regard to the opportunities for both black and Hispanic voters under the ten-district components, it appears that neither of the proposals is designed to afford equal opportunity to minority voters. For example, in both the 10F(3) and the 10I(1) plans, it appears that neither of the two districts that the city offers as providing an opportunity for Hispanic voters actually would accomplish that goal. In both plans, it appears that Hispanics are less than 45 percent of the citizen voting-age population in each of the two districts. Furthermore, those districts are drawn in a way that unnecessarily merges concentrations of Hispanic and white voters, particularly in 10F(3) District A and 10I(1) District B, where the white voter group is one with particularly high registration and turnout rates. The proposed ten-district plans also merge concentrations of black and white voters in some areas where the white voter group historically has been antipathetic to black persons. In addition, the unnecessary fragmentation of black neighborhoods in 10F(3) between Districts B, C, and F, and in 10I(1) between Districts E and F would appear to minimize black voting strength.

We further note the city's recognition that under both of the two adopted ten-district proposals as well as under the quadrant component, the opportunities for Hispanic voters are not expected to be fully realized until the mid-1990s at the earliest, notwithstanding the concerns of the Hispanic community and the conclusion by the Williams court that Hispanic voters be able to elect candidates of their choice to the council as soon as possible.

In sum, the city maintains that the proposed electoral system will provide seven districts that allow minority voters to participate equally in the electoral process and to elect candidates of their choice to office. In our view, however, the city has not demonstrated that the proposal now before us provides black and Hispanic voters with a realistic opportunity to elect candidates of their choice to the city council in any of

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the quadrant districts as proposed to be drawn or in any more than three of the ten local districts.

With regard to the proposal to amend candidate qualifications so that a term of 366 days, rather than two full years, will be counted in determining the limitation on consecutive terms for a non-mayoral councilmember, the information available to us demonstrates that only the two incumbent black councilmembers would be directly affected by this proposal, such that they would be ineligible to seek re-election in 1991. Further, the information available to us indicates that the change was proposed for this purpose and that the city rejected an alternative that would have applied this change prospectively, rather than retroactively.

In light of the information presently available to us, therefore, and under the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city's burden has been sustained in this instance with regard to either of the 10-4-1 proposals now before us or the proposed changes in the manner of counting consecutive terms to determine non-mayoral candidate eligibility. In addition, it does not appear that either of the current proposals assures to the affected minority group members the equality of opportunity necessary to remedy the Section 2 violation found to exist in the current system. Accordingly, on behalf of the Attorney General, I must object to the proposed redistricting plans and, therefore, to the proposed charter amendments establishing the 10-4-1 method of election and changing the definition of terms under the consecutive terms provisions for non-mayoral candidate eligibility.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.10 and 51.45).

The Attorney General does not interpose any objection to the increase in the size of the city council from eleven to fifteen members, the change in the effective date of term of office for mayor and council, and the changes in the powers and duties of the mayor and council pursuant to Chapter III, Section 2; Chapter XVI, Section 1; and Chapter XVII, Section 2. However, we note that Section 5 expressly provides that the failure of the

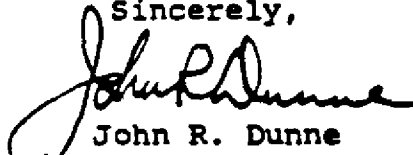
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Attorney General to object does not bar subsequent litigation to enjoin the enforcement of these changes. 28 C.F.R. 51.41.

The remaining changes under the proposed charter amendments are directly related to or dependent on the change to the proposed 10-4-1 method of election. Accordingly, the Attorney General is unable to make any determination under Section 5 at this time regarding concurrent terms by majority vote for mayor and council; a change from a two-year to a four-year term for mayor; a decrease in the number of consecutive terms for the mayor; the changes in the definition of term in order to determine the number of consecutive terms served for mayor; the changes in candidate qualification (Chapter IV, Section 6); the alteration in ballot language to implement the proposed 10-4-1 method of election (Chapter IV, Section 8); and the changes in the powers and duties of the mayor and council pursuant to Chapter XXIV, Section 13. See also 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the City of Dallas plans to take concerning these matters. If you have any questions, you should call Lora L. Tredway (202-307-2290), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 4 1991

Honorable John Hannah, Jr.
Secretary of State
P. O. Box 12060
Austin, Texas 78711-2060

Clarence A. West, Esq.
City Attorney
P. O. Box 1562
Houston, Texas 77251-1562

Dear Messrs. Hannah and West:

This refers to Chapter 666 (1991), which amends the procedures for filling vacancies; and the 1991 redistricting plan for the City of Houston in Harris, Montgomery, and Fort Bend Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial response to our request for additional information on August 29, 1991, and received further responses on several dates thereafter.

We have carefully considered the extensive information provided by the city and the arguments ably presented by its representatives, as well as the comments and information provided by other individuals, including members of the city's black and Hispanic communities. At the outset, we note that in making the necessary Section 5 determinations, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., *Procedures for the Administration of Section 5* (28 C.F.R. 51.52 (a), 51.55, 51.56). For example, we cannot preclear those portions of a plan where the jurisdiction has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities. See, e.g., *Garza v. Los Angeles County*, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); *Ketchum v. Byrne*, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict (*id.*). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results.

Turning to the instant submission, we note that perhaps the most striking demographic change experienced by the City of Houston in the past decade has been the dramatic increase in the Hispanic population. From 1980 to 1990, the Hispanic population grew by 60 percent, rising from 17.6 percent to 27.6 percent of the total city population. The black population percentage remained essentially unchanged while the white population percentage dropped from 52.3 to 40.6 percent.

This demographic shift, however, does not appear to have been reflected in any significant increase in the past decade in the opportunity of Hispanic voters to elect candidates of their choice to the city council. Following the city's adoption in 1979 of the current system of nine councilmembers elected from single-member districts, five elected at-large, and the mayor elected at large (the "9-5-1" system), each districting plan has included one district with an Hispanic majority and the sole Hispanic elected to the council has represented that district. As described by the city, there are a number of factors relevant to understanding this disparity between potential Hispanic voting strength and what has been realized, but, in large part, it appears to be the product of an ongoing pattern of polarized voting operating in the context of an electoral system in which only one district has an Hispanic majority.

Recently, in response to concerns voiced by the Hispanic community for greater representation on the city council, the city undertook an intensive review of its electoral system. Numerous hearings and meetings were conducted, from February through April of this year, and minority leaders testified about the underrepresentation issue. After much debate, it was agreed to propose an enlarged city council elected pursuant to a 16-6-1 system. However, the change was conditioned on approval in a referendum, and the proposal was subsequently defeated in the August 1991 citywide vote.

It was in this context that, in May and June of this year, the city council considered and adopted the proposed redistricting plan for the existing 9-5-1 structure. The city informs us that here, as well, it sought to recognize the growing Hispanic population. However, the plan continues to provide only one district in which Hispanic voters will have the opportunity to elect a candidate of their choice and fragments the remainder of the community into a number of adjoining districts.

In this regard, we note that several alternative plans were developed which would more fairly represent Hispanic voting strength in the city. In particular, it was shown that by avoiding fragmentation a plan would contain two districts in which Hispanics constitute a majority of the voting age population. While we understand that these illustrative districts were developed in the context of an alternative plan that had an unrelated deficiency, we have received no explanation for the city's decision not to present these districts for public review in a plan that properly could be implemented.

We have carefully considered the city's contentions concerning the redistricting process, the redistricting issues with which it was confronted, and the reasons stated for the choices it ultimately made. This review indicates that, by the end of the process, it was generally recognized that a nine-district plan with two districts with Hispanic voting age population majorities would provide Hispanic voters with a substantially greater electoral opportunity than contained in the proposed plan.

We also take note that in the plan adopted to implement the 16-6-1 proposal, the city appears to have been willing to recognize the Hispanic population growth. However, in the nine district proposal this latter goal appears to have been subordinated to a concern for protecting white incumbent councilmembers. As noted above, while incumbency is not in and of itself an inappropriate consideration, it may not be accomplished at the expense of minority voting potential. See, e.g., Garza, 918 F.2d at 771.

Finally, we note that another factor which seemingly limited the city's ability to fairly reflect Hispanic voting strength was the decision not to split existing county precincts. We are aware that the plan ultimately must be implemented without such precinct splits, but it is our understanding that if such splits are necessary in order to adopt a proper plan, the county may then adjust its precincts to follow the new city district lines.

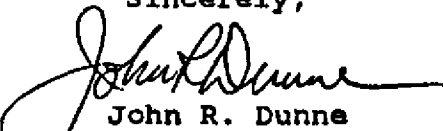
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan.

With regard to the change in the procedures for filling vacancies, the Attorney General does not interpose any objection. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this change if additional information that would otherwise require an objection comes to our attention during the remainder of the 60-day period. See 28 C.F.R. 51.41 and 51.43.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, and in light of the impending municipal election, please inform us of the action the city plans to take concerning this matter. In this regard, we stand ready to immediately review any remedial redistricting plan adopted by the city. If you have any questions, you should call Mark A. Posner (202) 307-1388, an attorney in the Voting Section.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 6, 1992

Honorable Marilyn Cox
Bailey County Judge
300 South 1st Street
Muleshoe, Texas 79347

Dear Judge Cox:

This refers to the 1991 redistricting plans for commissioners court and justice of the peace/constable districts, the realignment of voting precincts, and a polling place change in Bailey County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our January 30, 1992, letter on February 6, 1992.

We have carefully considered the information you have provided, as well as 1990 Census data and information from other interested parties. We note that between 1980 and 1990 the Hispanic share of Bailey County's population increased from 33.9 to 38.8 percent. Nevertheless, the Hispanic share of the population in District 4, the only district with a Hispanic population majority, decreases from 69.3 percent under the existing plan to 64.2 percent under the proposed plans.

We recognize that the 1990 Census revealed that District 4 was underpopulated. Our review of the county's demography reveals, however, that a five percentage point reduction in the Hispanic share of the population in District 4 was not necessary to comply with the one person, one vote requirement of the United States Constitution. Moreover, in light of the existing Hispanic registration levels in the county and District 4 in particular and our analysis of the results of the 1990 primary election involving an unsuccessful Hispanic candidate, the proposed plans' reduction in the Hispanic share of the population in District 4 would appear to lessen the opportunity for Hispanics to elect representatives of their choice. See Beer v. United States, 425 U.S. 130 (1976).

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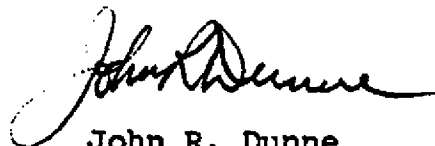
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plans for county commissioner and justice of the peace/constable districts.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the voting precinct realignment and polling place change are dependent upon the objected-to redistricting plans, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Bailey County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

Michael D. Morrison, Esq.
Guinn & Morrison
Baylor Law School
P.O. Box 97288
Waco, Texas 76798-7288

MAR 17 1992

Dear Mr. Morrison:

This refers to the 1991 redistricting plans for commissioners court districts, and justice of the peace and constable districts; a realignment of precincts; the elimination of six voting precincts; and the establishment of three new polling places and the elimination of nine polling places for Calhoun County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on December 23, 1991, and January 17, 1992.

We have considered carefully the information you have provided, as well as comments from other interested persons. At the outset, we noted that according to the 1990 Census, Hispanics constitute 36 percent of the county's population and are principally concentrated in the City of Port Lavaca, where about three-quarters of the county's Hispanic population resides. In the proposed redistricting of the commissioners court districts, as well as in the plan for justices of the peace and constables, the Hispanic community in the city is fragmented among four districts (we note that the two plans are identical except that Anglo-majority District 4 in the commissioners court plan is split into two districts in the justice/constable plan). The resulting plan includes one district (District 2) that is majority Hispanic in population and voting age population (59% and 56%, respectively), but the county's registration data indicate that Hispanics would be a minority of the district's registered voters. In light of the apparent pattern of polarized voting in county elections, there is substantial doubt that this district will afford Hispanic voters the opportunity to elect their preferred candidate.

Defendant's Exhibit #

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Our review further reveals that during the redistricting process Hispanic leaders indicated that Hispanic voting strength would be more fairly represented by providing that District 1, rather than District 2, be drawn as the Hispanic majority district. Support for this position is found in the fact that during the 1980s there was substantial Anglo growth in District 2 while the Hispanic population declined slightly, and we understand that this demographic change is continuing. In District 1, however, the Hispanic population increased while the Anglo population decreased. During the redistricting process, Hispanic leaders drew the county's attention to these demographic trends and the need for a somewhat larger Hispanic majority than proposed in order to provide Hispanic voters a realistic opportunity to elect their preferred candidate. It appears that the county understood that there were readily available alternatives that would address these concerns, yet the county has not provided any nonracial explanation for their rejection.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court and justice of the peace/constable redistricting plans. Therefore, on behalf of the Attorney General, I must object to these changes.

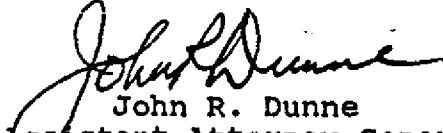
With respect to the precinct and polling place changes, the Attorney General will make no determination since these changes are directly related to the redistricting plans. 28 C.F.R. 51.35.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

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In this regard, we understand that contrary to the express proscription of the Voting Rights Act, the county implemented the unprecleared redistricting plans in the March 10, 1992, primary election. Accordingly, to enable us to meet our responsibility to enforce the Act, please inform us within ten days of the action Calhoun County plans to take concerning these matters. Please contact Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 30, 1992

Bob Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts, the renumbering of voting precincts, realignment of voting precincts, the elimination of a voting precinct and the polling place therefor, and two polling place changes for Castro County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on January 30 and March 5 and 13, 1992.

We have considered carefully the information you have provided, as well as comments from other interested persons. At the outset, we note that according to the 1990 Census, Hispanics constitute 46% of the county's population and are principally concentrated in the City of Dimmitt and the Town of Hart. We also note that a significant number of Hispanic residents in the county are noncitizens and not eligible to vote. We have identified two specific areas of migrant farmworker housing, Azteca Apartments and the Coronado Acres subdivision, where we understand there are concentrations of Hispanic persons who are not eligible to vote.

In the proposed redistricting of the commissioners court districts, the county has proposed a plan with two majority-minority districts. District 1 is 58% Hispanic and includes the entire town of Hart and the southeast quadrant of the county, but no part of Dimmitt. District 3 is 65% Hispanic, and includes part of Dimmitt and the two migrant housing developments noted above. While these two districts are majority Hispanic in population and voting age population (51% and 56% respectively), further information indicates that Hispanics who are eligible to vote would be in the minority in both districts. In light of the

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apparent pattern of polarized voting in county elections, it would not appear that either of these districts will afford Hispanic voters the opportunity to elect their preferred candidates.

We understand that during the redistricting process several alternatives were presented and rejected and that, in the course of the redistricting debate, representatives for the minority community urged the county to create one or two districts with populations greater than 70% Hispanic so that Hispanic voters would have a realistic opportunity to elect their candidates of choice. While we recognize that it may not be possible to draw two districts which would afford minority voters such an opportunity, given the large noncitizen population in the county, the county has not provided any nonracial explanation for its failure to adopt a plan which includes at least one viable Hispanic district.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for county commissioner districts.

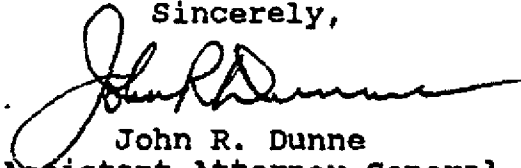
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither a discriminatory purpose nor a discriminatory effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the voting precinct and polling place changes are dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

- 3 -

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne", written over a horizontal line.

John R. Dunne
Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

Robert Bass, Esq.
The Wahrenberger House
208 West 14th Street
Austin, Texas 78701

OCT 6 1992

Dear Mr. Bass:

This refers to the 1992 redistricting plan for the commissioners court of Castro County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 4, 1992; supplemental information was received on September 28 and 30, and October 1, 1992.

We have carefully considered the information you have provided, as well as information provided by other interested persons. According to the 1990 Census, Hispanics constitute 46 percent of the population, 39 percent of the voting age population, and 34 percent of the citizen voting age population. No Hispanic person has been elected to the commissioners court. As you are aware, on March 30, 1992, the Attorney General interposed an objection under Section 5 to the initial redistricting plan adopted by the commissioners court following the 1990 Census. In the objection letter, we concluded that the county had not "provided any nonracial explanation for its failure to adopt a plan which includes at least one viable Hispanic majority district." We noted in that regard that county elections appear to be characterized by a pattern of polarized voting, and that while two districts in the 1991 plan were majority Hispanic in population and voting age population (Districts 1 and 3), it appeared that Hispanics did not constitute a majority of the eligible voting age population in either district because of the presence of a noncitizen Hispanic population in the county. We also noted our understanding that noncitizens are particularly concentrated in two areas of migrant farmworker housing, Azteca apartments and Coronado Acres.

Despite the absence of Section 5 preclearance, the county used the 1991 plan for the March 10, 1992 primary for commissioner Districts 1 and 3. We understand that it is preparing to hold the November general election pursuant to this plan as well. Section 5 expressly provides that covered jurisdictions, such as Castro County, Texas, may not implement

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any change in a voting practice or procedure until preclearance is obtained, either from the Attorney General or the United States District Court for the District of Columbia. The Supreme Court has repeatedly held that Section 5 means what it says. E.g., Clark v. Roemer, 111 S.Ct. 2096 (1991); Hathorn v. Lovorn, 457 U.S. 255 (1982); United States v. Board of Supervisors of Warren County, 429 U.S. 642 (1977) (per curiam); Allen v. State Board of Elections, 393 U.S. 544 (1969). See also Procedures for the Administration of Section 5 (28 C.F.R. 51.10). "A voting change in a covered jurisdiction 'will not be effective as la[w] until and unless cleared' pursuant to one of these two methods." Clark v. Roemer, *supra*, 111 S.Ct. at 2101, quoting Conner v. Waller, 421 U.S. 656 (1975) (per curiam). Although as of the March 10, 1992 primary date, the Attorney General had not yet ruled on the county's preclearance request, preclearance -- and not the absence of a Section 5 determination -- is the necessary prerequisite for the implementation of a covered voting change, and in our December 6, 1991 request for additional information we specifically advised the county that the plan was unenforceable until preclearance was received. Furthermore, the illegal implementation of the redistricting plan in the primary election does not validate continued implementation in the general election. Clark v. Roemer, *supra*, and 111 S.Ct. 399 (1990).

Against this backdrop, the county adopted and now seeks Section 5 preclearance for a revised redistricting plan. The proposed plan, like its predecessor, includes two districts with Hispanic population majorities. Both include a district that is 65 percent Hispanic in population (District 2 in the 1992 plan; District 3 in the objected-to plan) and a district (District 1 in both plans) that is between 55 and 60 percent Hispanic (the new plan drops the Hispanic population percentage in this district by two percentage points from the objected-to plan).

The county's decision to shift the location of the district with the highest Hispanic population percentage from District 3 in the objected-to plan to District 2 was not required in order to remedy the concerns that led us to interpose an objection to the 1991 plan. This shift is significant since, pursuant to the county's system of staggered terms, District 3 is to elect its commissioner this year while the District 2 position will not be up for election until 1994. Our review indicates that the county specifically adopted this change in an attempt to validate the implementation of the unprecleared plan in this year's elections. The shift would have the necessary effect of delaying for two years the opportunity afforded Hispanics to elect a candidate of their choice while enabling the county to argue that no real harm would flow from the continued implementation of the objected-to plan in this year's elections since no election would be scheduled in the district with the highest Hispanic population

- 3 -

percentage. In this regard, our analysis indicates that reasonable redistricting alternatives are available in which District 3 would offer Hispanic voters a realistic electoral opportunity. Furthermore, there is no claim that the proposed delay is being undertaken to benefit the Hispanic community (e.g., to permit Hispanics to conduct additional voter registration drives).

In adopting Section 5 of the Voting Rights Act of 1965, Congress took the extraordinary step of reversing the usual presumption that laws validly adopted by state and local governments are effective unless judicially enjoined so as to "shift the advantage of time and inertia from the perpetrators of the evil [of discrimination] to its victims." South Carolina v. Katzenbach, 383 U.S. 301, 328 (1966). Castro County's attempt to validate its illegal implementation of the 1991 plan and delay the provision of an electoral opportunity to its Hispanic residents does not comport with this central Section 5 principle.

Under Section 5, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plan for the commissioners court.

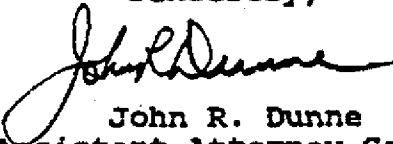
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plan for the commissioners court continues to be legally unenforceable. Clark v. Roemer, *supra*; 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), Special Section 5 Counsel in the Voting Section. Because the implementation of the objected-to plan is being addressed in the consolidated cases of Valdez v. Castro County, Texas, C.A. No. 2-92-CV-168

- 4 -

(N.D. Tex.), and Crespin v. Castro County, Texas, C.A. No. 2-92-CV-202 (N.D. Tex.), we are providing a copy of this letter by telefaxsimile transmission to the members of the three-judge court and plaintiffs' counsel in these cases.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable William L. Garwood
Honorable Mary Lou Robinson
Honorable Eldon B. Mahon

Rolando Rios, Esq.
William L. Garrett, Esq.
Judith Sanders-Castro, Esq.
Jose Garza, Esq.



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts and the realignment of voting precincts in Cochran County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 6 and March 19, 1992.

We have considered carefully the information you have provided, as well as 1990 Census data and information from other interested persons. According to the 1990 Census, Hispanics constitute 42.4 percent of the county's total population and 36.1 percent of its voting age population. The existing commissioner districts were drawn based upon 1970 Census data, which showed that 28.4 percent of the total population in Cochran County was Hispanic. Thus, there has been a substantial increase in Cochran County's Hispanic population since the Census upon which the existing plan was based.

Approximately three-quarters of the county's Hispanic residents are concentrated in the town of Morton. Under the existing district boundaries this concentration of Hispanic population in Morton is divided among several districts so that in District 4, the only district with a Hispanic population majority, Hispanics make up 58.6 percent of the total population and 51.2 percent of the voting age population according to the 1990 Census. Your submission included a report prepared by Allison and Associates, which stated that "[t]here does appear to

- 2 -

be some fragmentation of minority population in the Town [of] Morton which should be addressed when bringing the population balance of [District] No. 4 into compliance."

Notwithstanding this advice, the proposed redistricting plan continues significantly to divide the Hispanic community in Morton, resulting in a reduction in the Hispanic share of the population in District 4 of nearly two percentage points (to 56.7%). The county has failed adequately to explain this reduction in the Hispanic population percentage of the proposed plan's most heavily Hispanic district. Indeed, our analysis of the county's demography indicates that such a reduction was unnecessary to satisfy legitimate redistricting criteria.

In this regard, we note that the county commissioners considered and rejected two alternative plans prepared by its consultant. Both of these plans, in addition to the proposed redistricting plan, appear to have imposed a 65 percent ceiling on total minority population within each district. In light of the county's demography, the lower rates of political participation among Hispanics acknowledged in your submission and the apparent polarization in voting in the county, we do not believe such an approach to redistricting has been justified.

Finally, concerns have been raised about the nature and extent of minority participation in the county's redistricting process. In particular, it does not appear that the county's initial redistricting discussions were publicized or that the county made any direct effort to notify and involve the minority community in the redistricting process until a proposed plan was already prepared.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court redistricting plan. Therefore, on behalf of the Attorney General, I must object to these changes.

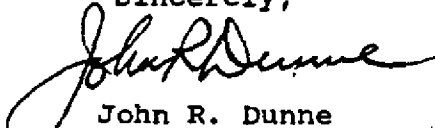
Because the realignment of the voting precincts is directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to that matter. 28 C.F.R. 51.22(b).

- 3 -

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the objected-to changes continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Act, please inform us of the action Cochran County plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle, an attorney in the Voting Section, at (202) 514-6196.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to your May 1, 1992, requests that the Attorney General reconsider the objections interposed under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1991 redistricting plans for the commissioners courts in Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas and the redistricting plan for the commissioners court and for justices of the peace and constables in Bailey County, Texas. We received your requests on May 4, 1992.

As you are aware, the redistricting plans for these Texas counties were separately submitted for Section 5 review and were the subject of separate Section 5 determination letters. The instant reconsideration requests, however, are identical and accordingly we are responding to all the requests by this letter. The requests allege that the Attorney General applied an improper standard in interposing these Section 5 objections and indicate that supporting information will be provided after the Department responds to the Freedom of Information Act requests that have been filed with regard to the Department records associated with the objections. In this regard, we note that we currently are processing the FOIA requests and should respond to all the requests shortly. The reconsideration requests otherwise do not offer any specific reasons why the objection analyses may have been flawed or present any data or other information to support withdrawal of the objections.

- 2 -

Section 51.48 of the Procedures for the Administration of Section 5 specifies that "[t]he objection shall be withdrawn if the Attorney General is satisfied that the change does not have the purpose or effect of discriminating on account of race, color, or membership in a language minority group." See also Georgia v. United States, 411 U.S. 526 (1972); 28 C.F.R. 51.52. The instant requests do not establish any basis for concluding that the counties have met their burden in this regard, and our review of the objections indicates that we applied the statutory standards contained in Section 5 in interposing the objections. Accordingly, on behalf of the Attorney General, I decline to withdraw the objections to the commissioners court redistricting plans for Castro, Cochran, Deaf Smith, Hale, and Terrell Counties, Texas, and the objection to the redistricting plan for the commissioners court and for justices of the peace and constables for Bailey County, Texas.

As previously noted in the objection letters, Section 5 provides that the counties may seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the counties may at any time renew their requests that the Attorney General reconsider the objections. 28 C.F.R. 51.45.

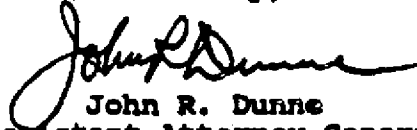
We wish to emphasize, however, that unless and until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans to which objections have been interposed are legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45. We note that each of the counties requesting reconsideration implemented its unprecleared 1991 plan in the 1992 primary election, contrary to the express requirement of Section 5 that no voting change may be implemented without first obtaining Section 5 preclearance either from the Attorney General or the District Court for the District of Columbia.

Accordingly, to enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action that Bailey, Castro, Cochran, Deaf Smith, Hale, and Terrell Counties plan to take to place themselves in compliance

- 3 -

with the Act. If you have any questions, you should call Mark A. Posner, Section 5 Special Counsel in the Voting Section, at (202) 307-1388.

Sincerely,

A handwritten signature in dark ink, appearing to read "John R. Dunne", written in a cursive style.

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 10, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for the commissioners court and the realignment of voting precincts for Deaf Smith County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 10, March 23, and March 26, 1992.

We have considered carefully the information you have provided, as well as information from other interested persons. According to the 1990 Census, Hispanics constitute 49 percent of the county's population and are principally concentrated in the City of Hereford. In the proposed redistricting plan, the county divides the Hispanic population in Hereford among three districts. In light of the apparent polarization in voting, Hispanic voters appear to have an opportunity to elect a candidate of their choice only in one district. That district, District 2, is 69.0 percent Hispanic in population in the existing plan and is increased to 69.8 percent Hispanic in the proposed plan. In 1990, the district elected the first Hispanic commissioner in modern times, after unsuccessful Hispanic candidacies in 1982 and 1986 in the district.

The remainder of Hereford's Hispanic population is divided between proposed Districts 1 and 4 which are 60.5 percent and 49.0 percent Hispanic, respectively. The county's registration data suggest that Hispanics will not have a registration majority

- 2 -

in either district, although they would approach that level in District 1. We note that Hispanic candidates have run unsuccessfully in that district in the past three elections, including most recently the 1992 Democratic primary where the county implemented the proposed plan contrary to the requirements of Section 5. Clark v. Roemer, 111 S.Ct. 2096 (1991).

It appears that the Hispanic population percentage in District 1 could have been increased (by several percentage points) to allow Hispanic voters the opportunity to elect a candidate of their choice in this district by reducing the fragmentation of the Hispanic population in north Hereford between Districts 1, 2, and 4. In this regard, we note that the county's submission indicates that it was fully aware of the fragmentation occasioned by the proposed plan. Nevertheless, the county has failed adequately to justify its districting decisions in this regard.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court redistricting plan. Therefore, on behalf of the Attorney General, I must object to this change.

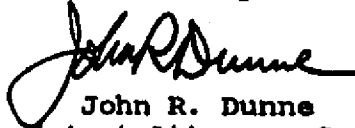
Because the precinct realignment is directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to this matter. 28 C.F.R. 51.22(b).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, *supra*; 28 C.F.R. 51.10 and 51.45.

- 3 -

To enable us to meet our responsibility to enforce the Act, please inform us of the action Deaf Smith County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne", is written over the typed name.

John R. Dunne
Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

John T. Fleming, Esq.
Henslee, Ryan & Groce
9600 Great Hills Trail
Suite 300 West
Austin, Texas 78759

July 31, 1992

Dear Mr. Fleming:

This refers to the interim change in method of election from seven members elected at large by numbered positions to six elected from single-member districts and one elected at large, the districting plan, implementation schedule, polling place changes, a majority vote requirement, a precinct realignment, creation of a voting precinct, and a change in the method of selecting the president of the board of trustees for the Del Valle Independent School District in Travis County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on June 1, and July 28, 1992.

On June 1, 1992, we received your May 28, 1992, letter, which enclosed a new map of district boundaries for the six single-member districting plan and demographic data, including a new Census tract and block list, prepared by plaintiffs in Lopez v. Del Valle Independent School District, No. 475,874 (D. Travis County, Tx.). The new district map is different than the map submitted on February 25, 1992. We understand that at least some of these changes reflect revisions to the plan made by the court in Lopez, and that the map submitted on June 1, 1992, represents the districting plan implemented in the May 2, 1992, election. Your correspondence indicates that the school district no longer wishes to implement the districting plan initially submitted. Accordingly, no determination by the Attorney General is required concerning that districting plan submitted on February 25, 1992. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25 and 51.35). Instead, we have reviewed the districting plan submitted on June 1, 1992.

- 2 -

We have carefully analyzed the proposed changes and the information you have provided, as well as Census data and information and comments from other interested persons. According to the 1990 Census, black and Hispanic residents constitute 44.3 percent of the school district's population. We also note that the map of the districting plan submitted on June 1, 1992, and the demographic data provided on the same date do not correspond. Our estimates of the population data for the submitted districting plan reveal a total population deviation among the districts of approximately 38 percent.

We are mindful that the voting changes you have submitted for Section 5 review are intended to remedy the concerns expressed in our December 24, 1991, objection to a method of election with five single-member districts and two at-large seats and a districting plan proposed by the school district. Our objection letter noted that, in the context of the racial bloc voting apparent in the school district, the plan provided blacks and Hispanics a realistic opportunity to elect only one school board trustee out of seven, even though available alternative plans afforded minorities an opportunity to elect at least two trustees. The decision to maintain two at-large positions also raised concerns that the proposed changes were intended to minimize minority voting strength.

Analysis of the plan now under review reveals that it, too, contains only one district in which blacks and Hispanics have a realistic opportunity to elect their chosen representatives. The submitted plan also maintains an at-large position that would appear to be out of reach for minority voters. While the lack of accurate demographic data for the submitted plan makes our review more difficult, our analysis indicates that only District 1 has a majority of blacks and Hispanics of voting age. Serious concerns have been raised as to whether minority voters in any of the other districts will have an opportunity to elect their preferred candidates. Moreover, it appears that after our earlier objection, the board refused to consider alternative plans providing for two viable minority districts.

With respect to the majority vote requirement for the at-large position on the board of trustees, it is generally well established that a majority vote requirement in an at-large context enhances the opportunity for discrimination against minority voters. See, e.g. City of Port Arthur v. United States, 459 U.S. 159 (1982); Senate Report No. 417, 97th Congress, 2nd Session 6 (1982). It appears that imposition of a majority vote requirement in Del Valle Independent School District would make it more difficult for minority voters to elect candidates of their choice to the at-large position and the school district has presented us with nothing to show that this would not be the case.

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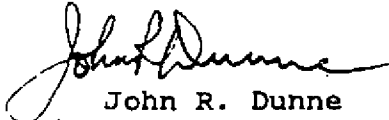
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that proposed changes do not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In light of the information available to us, and given the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Accordingly, on behalf of the Attorney General, I must object to the proposed method of election, the districting plan, and the majority vote requirement as it applies to the at-large position on the board of trustees for the Del Valle Independent School District.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the method of election, districting plan and the majority vote requirement as applied to the at-large position on the board of trustees continue to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

The remaining changes are directly related to the change in the method of election and the districting plan. Accordingly, the Attorney General is also unable to make any determination regarding these changes under Section 5 at this time. See also 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Del Valle Independent School District plans to take concerning these matters. If you have any questions, you should call Richard Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 30 1992

Michael Morrison, Esq.
Guinn & Morrison
Baylor Law School
P.O. Box 97288
Waco, Texas 76798-7288

Dear Mr. Morrison:

This refers to the 1991 redistricting plan for commissioner court districts, the reduction in the number of justices of the peace and constables from five to four and the districting plan, the realignment of voting precincts, the establishment of fourteen new voting precincts and seven polling places, four consolidations of voting precincts and the designation of polling places therefor, and seven polling place changes, in Ellis County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 29 and February 4, 1992; supplemental information was received on February 19 and March 5 and 6, 1992.

We have carefully considered the information you have provided as well as 1990 Census data and information from other interested parties. According to our information, the proposed commissioners court plan was one of many that was considered during the redistricting process. Although the proposed plan is not retrogressive of minority voting strength, most of the alternative plans that were considered provided for significantly greater increases in the minority percentage in one district. Some alternatives provided for a district with a majority of Hispanic and black population. We are unable to conclude that the county has provided sufficient nonracial reasons for its failure to adopt one of these alternatives.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the commissioners court redistricting plan.

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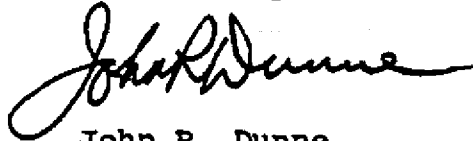
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the commissioners redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

The Attorney General does not interpose any objection to the remaining specified changes. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Ellis County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Since the Section 5 status of these changes has been placed at issue in Gant v. Ellis County Commissioners' Court, No. 3-92CV0395-D (N.D. Tex.), we are providing a copy of this letter to the court in that case.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 14, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for commissioners court districts and the realignment of voting precincts in Gaines County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your further response to our December 23, 1991, request for additional information on May 15, 1992.

We have considered carefully the information you have provided, as well as data from the 1990 Census and information from other interested parties. The commissioners court is composed of five members, four of whom are elected from single-member districts and the fifth member, the county judge, is elected at large.

Although Gaines County is nearly 29 percent Hispanic in voting age population, in each district in the proposed plan white residents constitute a majority of the voting age population. This result has been achieved by fragmenting Hispanic population concentrations in the cities of Seagraves and Seminole. At the time of redistricting the county was aware that it was possible to draw a district with a Hispanic voting age population majority but rejected the one alternative its demographer drew and failed to develop other such options that did not have the asserted defects of that plan. The reasons for rejecting a redistricting approach that would produce one Hispanic voting age population majority district do not withstand scrutiny. Moreover, the fact that a Hispanic challenger forced a runoff in the 1990 election in the most-heavily Hispanic district

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(40% Hispanic in population) suggests that the real concern may well have been the fact that providing a majority Hispanic voting age population district would produce a real opportunity for Hispanics to elect a candidate of their choice.

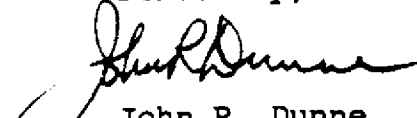
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the commissioners court redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the realignment of voting precincts is dependent upon the objected-to redistricting, the Attorney General will make no determination at this time with regard to this matter. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Gaines County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division



Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 17 1992

Honorable Ray Holbrook
County Judge
Courthouse
Galveston, Texas 77550

Dear Judge Holbrook:

This refers to the 1991 redistricting plan for justice of the peace/constable districts in Galveston County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 17, 1992; supplemental information was received on February 24 and March 5, 1992.

We have carefully considered the information you have provided as well as 1990 Census data, and information from other interested parties. The county is divided into eight justice of the peace/constable districts, one of which elects two justices of the peace but only one constable. Although blacks and Hispanics comprise 31.4 percent of the county's population, none of the existing districts contains a majority of black and Hispanic residents.

Our analysis of the process which resulted in the submitted plan shows that minority residents repeatedly pressed for a redistricting that would produce districts in which minorities would have an equal opportunity to elect candidates of their choice. Included in these proposals were plans presented in late August and mid-September, 1991, that would have given District 3 a majority black and Hispanic population. The county rebuffed these efforts with general claims that the existing districts had served the county well and an apparent reluctance to make any significant changes in the districts. However, two weeks later, at the request of an Anglo justice of the peace and constable, the county changed course and adopted a major transfer of territory and population between Districts 3 and 4. The effect of this transfer was to fragment a significant minority community in the City of Hitchcock from nearby minority communities in the cities of La Marque and Texas City. At the same time the county refused to reopen consideration of the changes proposed for District 3 by the minority community.

Defendant's Exhibit #

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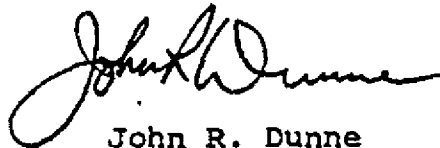
The reasons asserted by the county for its redistricting choices in this area do not withstand Section 5 scrutiny. Although convenience to the public is asserted to have been the principal reason for the change, it appears that persons in the area transferred will have further to travel to the justice court than before. Also, the county's statement that the redistricting will reduce a population disparity between the districts appears to be a post hoc justification, as the county was well aware of population disparities that existed (and will continue to exist under the proposed plan), but exhibited no interest in making any such adjustments in any other areas.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the justice of the peace/constable redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the justice of the peace/constable redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Galveston County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

March 17, 1992

J. Elliott Beck, Esq.
Clark, Thomas, Winters, & Newton
P.O. Box 1148
Austin, Texas 78767

Dear Mr. Beck:

This refers to the 1991 redistricting plan for commissioners court districts and the realignment of voting precincts in Gregg County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 17, 1992; supplemental information was received on February 12, 1992.

We note at the outset that on February 24, 1992, Gregg County filed an action under Section 5 seeking a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. Kenneth J. Walker, et al. v. United States, C.A. No. 92-0480 (D.D.C.) (three-judge court). Pursuant to the direction of Judge Richey at the status conference of March 6, 1992, we are today filing a notice and copy of this determination with the court and providing courtesy copies to the members of the three-judge panel.

We have considered carefully the information you have provided as well as Census data and comments and information from other interested parties. According to the 1990 Census, 18.9 percent of the population of Gregg County is black, and approximately 69 percent of the black population in Gregg County lives in the City of Longview. Under both the existing and proposed redistricting plans for Gregg County, District 4 is the most heavily black commissioner district, with black persons

- 2 -

making up 35.6 percent of the total population in District 4 under the existing plan compared to 37.5 percent of the total population under the proposed plan. It appears that elections have been marked by racially polarized voting and, with the exception of Commissioner James Johnson who was elected in 1990, black voters have not been able to elect candidates of their choice in District 4 or elsewhere in the county.

In addition, the information in your submission does not establish that black voters will have an equal opportunity to elect candidates of their choice in District 4 of your proposed plan. In that regard, we note the longstanding objections by members of the black community in Gregg County to the division of the black population concentrations in the southern portion of the City of Longview between commissioner Districts 1 and 4 and their unsuccessful efforts to persuade the commissioners court to adopt a redistricting plan in 1991 that would unite the majority-black areas in south Longview into one commissioner district which would provide black voters with a significantly more meaningful electoral opportunity. Nothing provided in your submission establishes that the division of the black community in south Longview was justified by any nondiscriminatory redistricting criteria.

Finally, we are not satisfied that the process of formulating the proposed redistricting plan was open to fair participation by members of the minority community. Although the commissioners court held public hearings, the hearings seem to have been a formality to which the commissioners court did not give serious consideration.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan presently under submission.

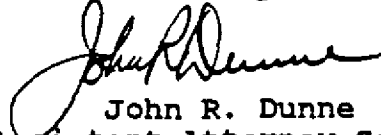
You may request that the Attorney General reconsider this objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S.Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

- 3 -

The realignment of the voting precincts is directly related to the proposed redistricting; therefore, the Attorney General will make no determination at this time with regard to that change. 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Gregg County plans to take concerning this matter. If you have any questions, please contact Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division

cc: Honorable Charles R. Richey
Honorable Laurence H. Silberman
Honorable Gerhard A. Gesell



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 10 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for the commissioners court, and the realignment and renumbering of voting precincts for Hale County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your responses to our request for additional information on February 10 and March 25, 1992; other supplemental information was received on March 6 and 30, 1992.

We have considered carefully the information you have provided, as well as information from other interested persons. As documented by the 1980 and 1990 Censuses, the Hispanic share of the county population rose substantially in the past decade, from 34 percent in 1980 to 42 percent in 1990. This increase similarly was reflected in the existing commissioners court districts. In particular, the Hispanic proportion in District 2 increased from a bare Hispanic majority of 54 percent to 67 percent, giving Hispanic voters a significant opportunity to elect a candidate of their choice to the commissioners court.

The proposed plan reduces the Hispanic population percentage in District 2 by nine percentage points (to 58%) while it increases the Hispanic share of the population in District 1 from 42 to 57 percent. The registration data compiled by the State of Texas reveal that Hispanics would not constitute a majority of the registered voters in either district in the new plan. On the other hand, the data show that Hispanics are nearly a majority of the registered voters in existing District 2.

- 2 -

Our analysis indicates that the malapportionment in the existing commissioners court districts may be remedied with little or no reduction in the Hispanic percentage in District 2 and with no meaningful alteration to the districting configuration selected by the county. This may be accomplished principally by minimizing the proposed plan's fragmentation of the Hispanic population in Plainview between Districts 1 and 2. It also appears that such a plan would continue to provide Hispanic voters the opportunity to exert a substantial influence in District 1 elections. In light of the apparent pattern of polarized voting in local elections, the proposed plan would appear to "lead to a retrogression in the position of ... minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). In addition, the county has failed to provide an adequate nonracial explanation for its redistricting decisions.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the county's burden has been sustained in this instance with respect to the commissioners court redistricting plan. Therefore, on behalf of the Attorney General, I must object to this change.

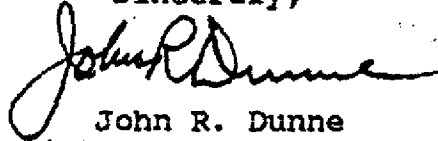
Because the realignment and renumbering of the voting precincts are directly related to the objected-to redistricting plan, the Attorney General will make no determination at this time with regard to these matters. 28 C.F.R. 51.22(b).

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the objected-to change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

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To enable us to meet our responsibility to enforce the Act, please inform us of the action Hale County plans to take concerning this matter. If you have any questions, you should call Mark A. Posner, an attorney in the Voting Section, at (202) 307-1388.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne". The signature is fluid and cursive, with the first name "John" being more prominent.

John R. Dunne
Assistant Attorney General
Civil Rights Division

T. 3/30/92
JRD:MAP:JVJ:gmh
DJ 166-012-3
91-3910

March 30, 1992

Brian P. Quinn, Esq.
McWhorter, Cobb and Johnson
P.O. Box 2547
Lubbock, Texas 79408

Dear Mr. Quinn:

This refers to the 1991 redistricting plan for the Lubbock Independent School District in Lubbock County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on January 28 and 29, 1992.

We have given careful consideration to the information you have provided, as well as the comments and information from other interested persons. At the outset, we note that minorities constitute 31.4 percent of the school district population (22.9% Hispanic and 8.5% black), and that pursuant to the five district, two at-large method of election, there presently are two minority trustees, both elected from single-member districts in which Hispanics and blacks constitute a majority of the population. Our analysis indicates that Hispanic and black voters generally form a cohesive electoral coalition, and that Anglos provide little support for candidates of the minority community's choice.

While the proposed redistricting maintains the minority percentages in majority-minority District 1, it effects a substantial decrease in majority-minority District 2, from 75 to 63 percent of the population (the Hispanic and black populations each decrease by six percentage points). This results from the school district's decision to correct the underpopulation of existing District 2 by adding two precincts that are

cc: Public File

- 2 -

overwhelmingly Anglo in population. The school district advises that this will safeguard the opportunity of black voters to elect a candidate of their choice in the district since they are more likely to coalesce with Anglo than Hispanic voters in school district elections. However, we find little or no support for this view in the recent election history of the county, and it appears that there are a number of alternative plans available that would minimize the reduction of minority voting strength in this district. We also note that while the minority percentage in proposed District 2 still exceeds the percentage in proposed District 1, the Hispanic proportion of the electorate is significantly greater in District 1 since we understand that it includes a substantial number of Anglo university students who generally do not participate in school district elections.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the school district's burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibilities under the Voting Rights Act, please inform us of the action the Lubbock Independent School District plans to take concerning this matter. If you have any questions, you should call Mark A. Posner (202-307-1388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 30, 1992

James E. Nelson, Esq.
Schafer, Davis, McCollum,
Ashley, O'Leary & Stoker
P. O. Drawer 1552
Odessa, Texas 79760-1552

Dear Mr. Nelson:

This refers to the 1991 redistricting plan for trustee districts and a polling place change for the Monahans-Wickett-Pyote Independent School District in Ward County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on January 28, 1992.

We have carefully considered the information you have provided as well as 1980 and 1990 Census data and information from other interested parties. According to our information, the board of trustees is composed of seven members; two are elected at large and five are elected from single-member districts. Hispanics comprise 34.5 percent of the school district population, and the school district has conceded that racial bloc voting characterizes school district elections.

The proposed plan appears to be virtually the equivalent of the existing plan in the extent to which it affords minorities in the district an equal opportunity to elect candidates of their choice. Thus, even though 1990 Census data reflect a significant increase over 1980 Census data in the Hispanic population, in both the existing plan, which was drawn on the basis of 1980 data, and the proposed plan, there is only one district, District 3, in which Hispanics constitute a majority of the total population.

Defendant's Exhibit #

DE-005696

USA_00012763

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Indeed, it appears that no attempt was made to acknowledge the increased Hispanic voting strength and, from the onset of the redistricting process, the school district identified retention of the one Hispanic district as part of its redistricting criteria. In accomplishing this result, the proposed plan appears unnecessarily to have fragmented Hispanic population in the City of Monahans. Our examination of minority concentrations in Monahans shows that elimination of such fragmentation could result in a second majority Hispanic district, despite the school district's demographer's statement to the contrary.

In addition, the school district appears to have avoided public participation in the redistricting effort as much as possible. The demographer developed the plan without even visiting the community, the school district neither invited nor arranged for any citizen participation, and decisions relating to the plan were made at school board meetings the notices for which were published only in English. Although the Voting Rights Act litigation that produced the existing method of election and districting plan had only recently been concluded, the school district's redistricting procedures seem to have been calculated to avoid participation in the process by the minority plaintiffs or their attorney. As a result, the school district succeeded in freezing in place a plan that does not appear fairly to reflect minority voting strength in the school district.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5, 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither a discriminatory purpose nor effect. 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of

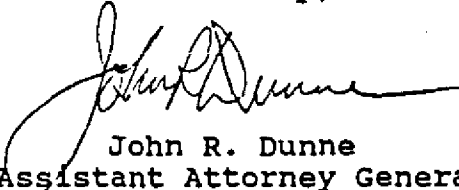
- 3 -

Columbia Court is obtained, the redistricting plan continues to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

Because the polling place change is dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to this change. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the Monahans-Wickett-Pyote Independent School District plans to take concerning this matter. If you have any questions, you should call Nancy Sardeson (202-307-3153), an attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 6, 1992

Robert T. Bass, Esq.
Allison & Associates
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the 1991 redistricting plan for the commissioners court, the redistricting plan for the justice of the peace/constable districts, the elimination of three polling places, and the realignment of voting precincts for Terrell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our December 30, 1991, request for additional information on February 5, 1992.

We have carefully considered the information you have provided, as well as 1990 Census data and information from other interested parties. With regard to the redistricting plan for the justice of the peace/constable districts, the Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

We are unable to reach the same conclusion regarding the redistricting plan for the commissioners court. We note that between 1980 and 1990 the Hispanic share of Terrell County's population increased by ten percentage points, from 43.3 percent to 53.3 percent. Under the existing districting plan, Hispanics constitute a significant majority of the population in two districts, District 1 (71.8%) and District 2 (79.8%). The

- 2 -

proposed redistricting plan, however, reduces the Hispanic population proportion in District 1 nearly nine percentage points (to 63%), while increasing the Hispanic population proportion four percentage points in District 2 (to 83.9%). In doing so, the plan fragments the county's Hispanic population among Districts 1, 2 and 4, and shifts politically active Hispanics from District 1 to District 2 and from District 2 into District 4.

Although the 1990 Census reveals that District 1 in the existing plan is overpopulated and that Districts 2 and 4 are underpopulated, our examination of county demography indicates that one-person, one-vote requirements could have been satisfied without reducing the Hispanic share of the population in District 1. Moreover, our analysis of recent elections indicates that the proposed plan's reduction in the Hispanic share of the population in District 1 would appear to lessen the opportunity for Hispanics to elect representatives of their choice. Beer v. United States, 425 U.S. 130 (1976). The county has failed to provide an adequate nonracial explanation for its redistricting decisions concerning the redistricting plan for the commissioners court.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In view of the concerns noted above, however, I am unable to conclude, as I must under the Act, that the county has carried its burden with regard to the submitted change. Accordingly I must, on behalf of the Attorney General, interpose an objection to the proposed redistricting plan for the commissioners court in Terrell County.

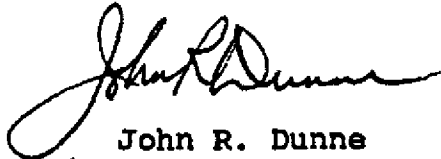
We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plan for the commissioners districts continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

- 3 -

Because the elimination of the three polling places and the realignment of voting precincts are dependent upon the objected-to redistricting plan, the Attorney General will make no determination with regard to them. 28 C.F.R. 51.22(b) and 51.35.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Terrell County plans to take concerning this matter. If you have any questions, you should call Richard B. Jerome (202-514-8696), an attorney in the Voting Section.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Dunne", written in a cursive style.

John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 19, 1993

Robert T. Bass, Esq.
Allison & Associates
Wahrenberger House
208 West 14th Street
Austin, Texas 78701

Dear Mr. Bass:

This refers to the reduction in the number of justice of the peace and constable districts from four to one and the implementation schedule in Bailey County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our March 16, 1993, request for additional information on May 19, 1993.

We have carefully considered the information that you have provided as well as 1990 Census data, comments from other interested persons and information contained in previous Section 5 submissions concerning Bailey County's justice of the peace and constable districts. According to the 1990 Census, Hispanic residents constitute 38.8 percent of the county's total population and 32.6 percent of the voting age population. Under the county's existing electoral system, there are four justice of the peace/constable districts, which coincide with the county's commissioner's court districts as they existed before we precleared the 1992 commissioner's court redistricting.

In 1992, we interposed a Section 5 objection to the county's 1991 redistricting plan, noting concerns about how District 4 was drawn in light of the apparent pattern of polarized voting in county elections and the recent, narrow defeat of a candidate preferred by Hispanic voters. The county subsequently revised its plan by increasing the Hispanic share of the population in District 4 to 70 percent (63 percent voting age population). We precleared the revised plan earlier this year.

- 2 -

Under the precleared plan, Hispanic voters would appear to have a good opportunity to elect their chosen candidates in District 4. But for the proposed reduction in the number of justices of the peace and constables, that opportunity would extend to the offices of justice of the peace and constable as there is no indication that the county would have departed from its historic pattern of matching its justice of the peace and constable districts with those used to elect county commissioners.

Concerns have been raised about the timing of the decision and the nature and extent of minority participation in the county's decision-making process that led to the proposed change. The decision to reduce the number of justices of the peace and constables followed our 1992 objection and came on the heels of a settlement in a lawsuit which produced a new commissioners court plan that enhances Hispanic voting potential.

In support of the proposed reduction the county notes that it has a long-standing practice of allowing the justice of the peace elected from District 1 to perform essentially all justice of the peace duties throughout the county. The county contends that the proposed reduction has been undertaken to consolidate justice of the peace and constable duties because the existing four positions are not necessary to fulfill the county's needs. While it may be true that having one justice of the peace instead of four might result in some economies, it is not clear how much money would be saved, since the projected cost savings, as we understand them, refer to potential costs if the existing system were successfully challenged in litigation. Nor did the county appear to consider the possibility of having two or three justices of the peace/constables instead of four as a means of saving costs while recognizing existing electoral opportunities for Hispanic voters. Under these circumstances, we cannot conclude that the county's proffered explanations for the proposed reduction have been justified.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted reduction in the number of justice of the peace and constable districts from four to one.

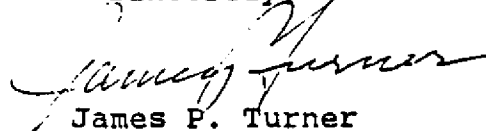
- 3 -

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.11 and 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the proposed reduction in justice of the peace and constable districts continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the submitted implementation schedule is directly related to the objected-to change, no determination by the Attorney General regarding the schedule is appropriate at this time. 28 C.F.R. 51.22(b).

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Bailey County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

May 10, 1993

Virginia Daugherty, Esq.
Daugherty & Associates
P.O. Box 15507
Amarillo, Texas 79105

Dear Ms. Daugherty:

This refers to the 1993 redistricting plan for commissioner court districts, the renumbering of voting precincts, realignment of voting precincts, the creation of a voting precinct and the polling place therefor, and a polling place change for Castro County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on March 9, 1993; additional information was received on April 27 and 28, and May 3, 1993.

We have considered carefully the information provided in this submission and in the county's submissions of its 1991 and 1992 redistricting plans, as well as Census data and information and comments received from other interested persons. As you know, we interposed Section 5 objections to both the 1991 and 1992 redistricting plans.

When we objected to the 1991 redistricting plan, we explained that the county had not demonstrated any nonracial explanation for its failure to provide for even one Hispanic district in which Hispanic voters would have a realistic opportunity to elect candidates of their choice. We noted that under the 1991 plan two districts (Districts 1 and 3) were majority Hispanic in total population and voting age population but that our analysis indicated that Hispanics did not constitute a majority of the eligible voting age population in either district because of the presence of a noncitizen Hispanic population in the county. We further noted that this noncitizen population is particularly concentrated in two areas of migrant farmworker housing, Azteca apartments and Coronado Acres. Despite the lack of Section 5 preclearance, the county implemented the 1991 redistricting plan in the 1992 primary elections for commissioners court.

Defendant's Exhibit #

DE-005705

USA_00012772

- 2 -

In 1992, following our objection, the county adopted a redistricting plan that shifted the district with the highest Hispanic population percentage from District 3 in the objected-to plan to District 2 in the proposed plan in an attempt to validate its implementation of the unprecleared plan in the county's 1992 primary elections. We noted that the effect of this shift, because of the county's system of staggering terms, was unnecessarily to delay for two years the opportunity afforded Hispanic voters to elect their candidates of choice. Accordingly, the Attorney General interposed an objection to the county's 1992 plan.

The 1993 redistricting plan now under review has two districts (Districts 1 and 3) with Hispanic total population percentages of 62.9 and 69.6 percent, respectively. District 1 includes the town of Hart, the southeast quadrant of the county and southern portions of the town of Dimmitt. District 3 extends through the northwest quadrant of the county and includes the Coronado Acres development and part of the town of Dimmitt. A third district which is 29 percent Hispanic in total population, District 4, cuts through a majority-Hispanic community in the southern half of the City of Dimmitt, thereby fragmenting this Hispanic population among Districts 1, 3 and 4.

Our analysis of voter registration and voter turnout estimates indicates that this fragmentation in south Dimmitt would unnecessarily limit the ability of Hispanic voters to elect their candidates of choice in proposed District 3. The turnout data you have supplied indicates a significant disparity between the rates of Hispanic and non-Hispanic turnout in the county, as a whole as well as in the precincts that comprise most of proposed District 3. Thus, the fragmentation of the Hispanic population concentration in South Dimmitt between three of the proposed districts is significant in light of the turnout disparities.

We have considered and found unpersuasive the county's contention that this fragmentation of the Hispanic population concentration in south Dimmitt is unavoidable. We note that the county considered and rejected at least one redistricting alternative that would have gone far toward remedying that fragmentation by unifying most of the Hispanic core population in Dimmitt into District 3 while at the same time resulting in a 73 percent Hispanic share of total population in that district. Other alternative approaches would appear to have been readily discernible, as well. While the county is not required by Section 5 to adopt any particular redistricting plan, it is not free to adopt plans that unnecessarily dilute minority voting strength.

- 3 -

In addition, it appears that the county's redistricting decisions have been made to foster the interests of incumbents on the commissioners court. We recognize that the protection of incumbents may not in and of itself be an inappropriate consideration, but it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991).

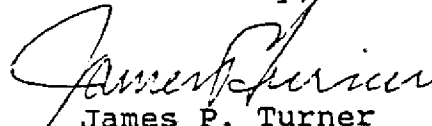
Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1993 redistricting plan for the commissioners court.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1993 redistricting plan for the commissioners court continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

Because the voting precinct and polling place changes are dependent upon the objected-to redistricting, the Attorney General will make no determination with regard to them. See 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Castro County plans to take concerning this matter. If you have any questions, you should call Robert Kengle (202-514-6196), an attorney in the Voting Section.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 4, 1993

Virginia Daugherty, Esq.
Daugherty and Associates
P. O. Box 15507
Amarillo, Texas 79105

Dear Ms. Daugherty:

This refers to the 1991 redistricting plan for the county commission, the additional polling place and the renumbering and realignment of voting precincts for McCulloch County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our March 12, 1993, request for additional information on April 5, 1993.

We have considered carefully the information you have provided as well as comments from other interested parties. The Hispanic share of the county's total population increased from 19.1 percent in 1980 to 26.4 percent in 1990; approximately 80 percent of the county's Hispanic population resides in the City of Brady. The commissioners court consists of four members elected from single-member districts and one member elected at large. The existing redistricting plan, which has been in use since 1968, divides the City of Brady and the Hispanic population in the city among the districts such that Hispanics comprise no more than 41 percent of the total population and 36 percent of the voting age population in any district, according to the 1990 Census.

Despite the significant increase in the percentage of Hispanic residents in the county since 1980 and despite the concentration of Hispanic residents in the City of Brady, the proposed plan maintains the division of Brady among the four districts, effectively dispersing most of the county's Hispanic residents among the districts. The result is that Hispanic residents comprise 42 percent of the total population and 36 percent of the voting age population in the most-heavily Hispanic district under the proposed plan.

- 2 -

The information available to us suggests that the commissioners court gave only perfunctory consideration to an alternative redistricting proposal that eliminated the fragmentation of the Hispanic community within Brady and provided for one district in which approximately 60 percent of the total population and 54 percent of the voting age population was Hispanic. While the county is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that perpetuates the unnecessary fragmentation of Hispanic population concentrations. In the context of an apparent pattern of racially polarized voting that has defeated candidates preferred by Hispanic voters or discouraged such candidacies under the existing redistricting plan, it appears that the proposed plan will continue to deny Hispanic voters an opportunity to elect candidates of their choice to the commissioners court.

The explanations provided in your submission for the continued division of the Hispanic community in Brady appear largely to be post hoc justifications for maintaining the status quo and thereby protecting the interests of the incumbent commissioners. We recognize that the protection of incumbents may not in and of itself be an inappropriate consideration, but it may not be accomplished at the expense of minority voting potential. See Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1991 commissioner court redistricting plan.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plan continues to be legally unenforceable. Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10 and 51.45.

- 3 -

With respect to the proposed additional polling place and renumbering and realignment of precincts, the Attorney General will make no determination at this time since these changes are directly related to the objected-to change. 28 C.F.R. 51.22.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action McCulloch County plans to take concerning this matter. If you have any questions, you should call Robert A. Kengle (202-514-6196), an attorney in the Voting Section.

Since the Section 5 status of the proposed redistricting plan has been placed at issue in Mireles v. McCulloch County, No. A-92 CA-577 SS (W.D. Tex.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Sam Sparks
United States District Judge

Counsel of Record



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

Irene E. Foxhall, Esq.
Mayor, Day, Caldwell & Keeton
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

AUG 30 1993

Dear Ms. Foxhall:

This refers to the 1992 redistricting plans for the commissioners court and justices of the peace/constables for Wharton County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your further response to our request for additional information on June 30, 1993; supplemental information was received on August 20, 1993.

We have carefully considered the information you have provided, data from the 1990 Census, and information from other interested persons. According to the 1990 Census, Hispanic and black residents constitute, respectively, 25.3 percent and 15.4 percent of the county's total population. The commissioners court consists of four members elected from single-member districts and the county judge, elected at large. We note that Wharton County currently uses the same districting plan to elect members of the commissioners court, justices of the peace and constables and that the proposed plan continues this practice. Apparently, no Hispanic or black person has been elected to county office in Wharton County in this century.

Our analysis of the county's demographic patterns shows that it is not possible to create a commissioners court district in which either Hispanic persons or black persons constitute a majority of the population. The information available to us suggests that the county's redistricting approach rested upon its assumption that Hispanic and black voters are not politically cohesive in Wharton County.

The absence of any voting precincts in Wharton County that have a Hispanic population majority precludes any definitive statistical assessment of Hispanic-black cohesion. However, anecdotal information that we obtained during our review supports

- 2 -

the conclusion that Hispanic and black voters are politically cohesive in Wharton County. The county has proffered no justification for its apparent failure to explore nonstatistical information relevant to the issue of minority cohesion.

Under the county's proposed plan, Hispanics and blacks combined would be a majority of the population in two districts, Districts 2 (centered around the City of Wharton) and 4 (centered around El Campo). However, in view of the apparent pattern of racially polarized voting in county elections and other factors, it would appear that neither of those districts will afford minority voters a real opportunity to elect candidates of their choice. One aspect of the proposed plan is the division of a predominantly minority area of the City of Wharton between Districts 2 and 4. We understand that, during the redistricting process, the plaintiffs in the pending one-person, one-vote lawsuit, Jackson v. Wharton County, No. H-92-2294 (S.D. Tex.), offered alternative plans that avoided such fragmentation, but that the county rejected those plans for a number of reasons, including their effect on commissioner services in rural areas. While the county is not required by Section 5 to adopt any particular plan, it is not free to adopt a plan that results in unnecessary fragmentation of minority population concentrations.

It appears that the Jackson plaintiffs made it clear from the start of the litigation that they were interested in reaching a compromise that included an increase in the minority percentage of District 2. The plaintiffs' view recognized that the black population of Wharton County, especially in the City of Wharton area, has a higher level of political participation than does the Hispanic population. On November 5, 1992, the plaintiffs' attorneys met with the county's attorneys and expert and made specific suggestions for modifying the county's proposed plan in order to increase the minority percentage in District 2. Although the plaintiff did not draw up plans embodying the suggestions made at the meeting, nothing prevented the county from pursuing the suggested alternatives. Our analysis reveals that there were easily discernible alternative districting options, consistent with the county's stated redistricting criteria, that would avoid the limiting of minority voting strength occasioned by the fragmentation evident in the proposed plan. The county has not provided a sufficient explanation for its failure to explore such alternatives.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot

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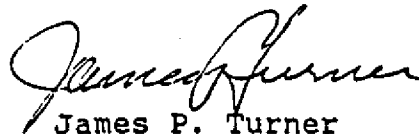
conclude, as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plans.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying, or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the redistricting plans continue to be legally unenforceable. See Clark v. Roemer, 111 S. Ct. 2096 (1991); 28 C.F.R. 51.10.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action Wharton County plans to take concerning this matter. If you have any questions, you should call George Schneider (202-307-3153), an attorney in the Voting Section.

Because the Section 5 status of the proposed commissioners court plan is a matter before the court in Jackson v. Wharton County, we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division

cc: Honorable Melinda Harmon
United States District Judge

Rex VanMiddlesworth, Esq.
Jose Garza, Esq.
Judith Sanders-Castro, Esq.

JPT:GS:DBM:lrj
DJ 166-012-3
92-5239

November 22, 1993

Irene E. Foxhall, Esq.
Mayor, Day, Caldwell & Keeton
700 Louisiana, Suite 1900
Houston, Texas 77002-2778

Dear Ms. Foxhall:

This refers to your request that the Attorney General reconsider the August 30, 1993, objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to the 1992 redistricting plan for the commissioners court and justices of the peace/constables for Wharton County, Texas. We received your letter on September 23, 1993.

Your November 12, 1993, letter withdraws your request from Section 5 review. Accordingly, no determination by the Attorney General is required concerning this matter. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.25(a)). We will proceed with our review of your 1993 redistricting plan for the commissioners court and justices of the peace/constables, submitted under Section 5 on November 15, 1993 (File No. 93-4359).

Because the Section 5 status of the proposed commissioner districts is a matter before the court in Jackson v. Wharton County, No. H-92-2294 (S.D. Tex.), we are providing a copy of this letter to the court and counsel of record in that case.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:

Steven H. Rosenbaum
Chief, Voting Section

cc: Honorable Melinda Harmon
United States District Judge

Rex VanMiddlesworth, Esq.
Jose Garza, Esq.
Judith A. Sanders-Castro, Esq.

cc: Public File



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

October 31, 1994

Ms. Mary Anne Wyatt
Golden Crescent Regional
Planning Commission
P. O. Box 2028
Victoria, Texas 77902

Dear Ms. Wyatt:

This refers to the creation of the Gonzales County Underground Water Conservation District; the districting plan; the establishment of polling places; the procedures for conducting the May 7, 1994, special election for the confirmation of the creation of the district, the approval to assess an ad valorem tax, and the election of directors; and the arrangement that Gonzales County conduct the May 7, 1994, special election for the district in Gonzales County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on August 30, 1994; supplemental information was received on October 18, 19 and 27, 1994.

The Attorney General does not interpose any objection to the creation of the Gonzales County Underground Water Conservation District; the procedures for conducting the May 7, 1994, special election for the confirmation of the creation of the district and the approval to assess an ad valorem tax; and the arrangement that Gonzales County conduct the May 7, 1994, special election for the district. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the districting plan, we carefully have considered the information that you have provided, as well as information provided by other interested persons. According to your submission, the Gonzales County Underground Water Conservation District has a total population of 16,587, of whom 36.5 percent are Hispanic and 9.4 percent are black.

- 2 -

The water district's directors will be elected from five single-member districts. The proposed districting plan provides for districts which are grossly malapportioned. The City of Gonzales comprises a single district that is two and a half times the size of any of the other districts (6,547 versus 2,611). That district contains nearly half of the minority population in the entire water district, but still has an Anglo voting age majority. Indeed, despite the large minority population, the proposed districting plan creates only one district with a majority combined voting age population, and even that majority (51.4 percent) appears too narrow to provide minority voters with an equal opportunity to elect candidates of their choice. The consequence of the proposed districting plan is that minority voting strength is diluted.

Those involved in drawing these districts were aware, if only from extensive media coverage on the subject, of the need to protect minority voting rights specifically where water districts are involved. Nevertheless, the minority community appears effectively to have been frozen out of the process which produced the proposed districting plan. None of the public hearing or meeting notices were posted in Spanish. There was no attempt to involve the minority community in the process or solicit their views with regard to particular boundary line choices. Nor was any attempt made to explore possible alternative districting plans that would have allowed minority voters an equal opportunity to participate in the electoral process and to elect candidates of their choice. For example, it appears that under a fairly drawn plan of single-member districts, minority voters would constitute effective majorities in two of the five districts.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The existence of some legitimate, nondiscriminatory reasons for the voting change does not satisfy this burden. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 446 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd, 459 U.S. 1166 (1983). In addition, the Section 5 Procedures (28 C.F.R. 51.55(b)(2)) require that preclearance be withheld where a change presents a clear violation of the results standard incorporated in Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In light of the

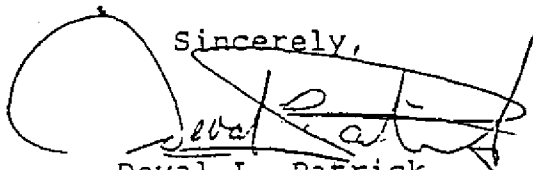
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considerations discussed above, I cannot conclude as I must under the Voting Rights Act, that your burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed districting plan for the Gonzales County Underground Water Conservation District.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the districting plan continues to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10 and 51.45.

The Attorney General will make no determination at this time with regard to the establishment of polling places for the districts or the May 7, 1994, election of directors as they are directly related to the districting plan. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the action the Gonzales County Underground Water Conservation District plans to take concerning this matter. If you have any questions, you should call Ms. Colleen Kane (202-514-6336), an attorney in the Voting Section.

Sincerely,

Deval L. Patrick
Assistant Attorney General
Civil Rights Division



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 21, 2002

Denise Nance Pierce, Esq.
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel
816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443

Dear Ms. Pierce:

This letter is in reference to the 2001 redistricting plans for the commissioners court, justice of the peace, and constable districts; the renumbering and realignment of voting precincts; two polling place changes; the elimination and renaming of polling places; and the temporary additional early voting locations and their hours for Waller County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your responses to our February 6, 2002, request for additional information through June 10, 2002.

We have considered carefully the information you have provided, as well as census data, comments from interested parties, and other information, including the county's previous submissions. As discussed further below, I cannot conclude that the county's burden under Section 5 has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the 2001 redistricting plans for the commissioners court, justice of the peace, and constable districts.

The 2000 Census indicates that Waller County has a total population of 32,663 persons, of whom 9,565 (29.3%) are black and of whom 6,344 (19.4%) are Hispanic. The county's voting age population is 24,277, of whom 7,601 (31.3%) are black and 3,871 (15.9%) are Hispanic.

- 2 -

The county is governed by a five-member commissioners court. Voters elect four commissioners to four-year, staggered terms from single-member districts, called precincts. The justice of the peace and constable districts are coterminous with the commissioners court districts. Under the census data above, there are two districts under the benchmark plan, Precinct 1 and Precinct 3, in which minority persons are a majority of the voting age population: Precinct 1 has a total minority voting age population of 52.5 percent, while Precinct 3 has a total minority voting age population of 71.9 percent.

In contrast, the proposed 2001 redistricting plans contain only one district in which minority persons are a majority of the voting age population. According to the information that you provided, the black percentage of the voting age population in proposed Precinct 1 voting age population drops to 29.7 percent. Within the context of electoral behavior in Waller County, the county has not established that implementation of this plan will not result in a retrogression in the ability of minority voters to effectively exercise their electoral franchise. Moreover, the viability of alternative plans demonstrates that the potential retrogression of the proposed plan is avoidable.

Our analysis of county elections shows that minority voters in Precinct 1 have been electing candidates of choice since 1996, and that those candidates are elected on the basis of strong, cohesive black and Hispanic support. Our statistical analysis also shows that white voters do not provide significant support to candidates sponsored by the minority community, and that interracial elections are closely contested. For example, the black candidate for commissioner in Precinct 1 prevailed in the last election by two votes. As a result, the proposed reduction in the minority voting age percentage in Precinct 1 casts substantial doubt on whether minority voters would retain the reasonable opportunity to elect their candidate of choice under the proposed plan, particularly if the current incumbent in Precinct 1 declines to run for office again.

Our review of the county's benchmark and proposed plans as well as the alternative plans presented to the county, suggests that the significant reduction in minority voting age population percentage in Precinct 1 in the proposed plan, and the likely resulting retrogressive effect on the ability of minority voters to elect candidates of choice, was neither inevitable nor required by any constitutional or legal imperative. Illustrative plans demonstrate that it is possible to avoid any retrogression in Precinct 1, maintain the minority voting strength in Precinct 3, and meet the county's redistricting criteria. Accordingly, we

- 3 -

are not persuaded by the county's contention that a reduction in minority voting strength in Precinct 1 was necessary to preserve the minority voting strength in Precinct 3 if one is to honor the redistricting criteria used by the county.

Under the Voting Rights Act, a jurisdiction seeking to implement a proposed change affecting voting, such as a redistricting plan, must establish that, in comparison with the status quo, the change does not "lead to a retrogression" in the position of minority voters with respect to the "effective exercise of the electoral franchise." See Beer v. United States, 425 U.S. 130, 141 (1976). If the proposed plan materially reduces the ability of minority voters to elect candidates of their choice to a level less than what they enjoyed under the benchmark plan, preclearance must be denied. State of Georgia v. Ashcroft, C.A. No. 2001-2111 (D.D.C. Apr. 5, 2002), slip op. at 117-18. In addition, the jurisdiction must establish that the change was not adopted with an intent to retrogress. Reno v. Bossier Parish School Board, 528 U.S. 320, 340 (2000). Finally, the submitting authority has the burden of demonstrating that the proposed change has neither the prohibited purpose nor effect. Id. at 328; see also Procedures for the Administration of Section 5 (28 C.F.R. 51.52).

In light of the consideration discussed above, I cannot conclude that your burden of showing that a submitted change does not have a discriminatory effect has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted redistricting plans.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. See 28 C.F.R. 51.44. In addition, you may request that the Attorney General reconsider the objection. See 28 C.F.R. 51.45. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes continue to be legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); 28 C.F.R. 51.10.

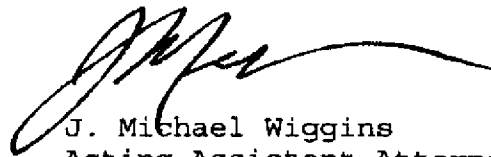
Please note that the Attorney General will make no determination regarding the submitted realignment and renumbering of voting precincts, the polling place changes, the elimination and renaming of polling places, and the temporary additional early voting locations and their hours because those changes are dependent upon the redistricting plan.

- 4 -

Further, in our letter of February 2, 2002, we informed you that, under the Voting Rights Act, changes, such as the county's proposed redistricting plans, are not legally enforceable until the jurisdiction has obtained Section 5 preclearance for those changes. Clark v. Roemer, 500 U.S. 646 (1991). However, it is our understanding that on March 12, 2002, Waller County conducted an election, which implemented the proposed plan, without such preclearance. Please inform us of the action Waller County plans to take regarding both the objection interposed by this letter as well as the conduct of the March 12 primary election without the requisite preclearance.

If you have any questions on either of these matters, you should call Mr. Timothy Mellett (202-307-6262), an attorney in the Voting Section. Refer to File Nos. 2001-3951 and 2002-2142 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Michael Wiggins', with a long horizontal flourish extending to the right.

J. Michael Wiggins
Acting Assistant Attorney
General

Statewide Redistricting Objection Letters



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

WBR:GWJ:CWJ:PFH:ELG:bhq
DJ 166-012-3
E0840

29 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to Senate Bill No. 1 (1981) which provides for the Congressional Districts for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was completed on December 7, 1981.

We have given careful consideration to the information provided by you, data available from the Bureau of the Census, and comments and information from interested third parties. We also have considered information relating to the issues raised in Seamon v. Upham, Civil Action No. P-81-49-CA (E.D. Tex.), a lawsuit involving the Congressional reapportionment.

As you are aware, under Section 5 the submitting authority has the burden of proving that a submitted plan does not have a discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also Section 51.39(e) of the Procedures for the Administration of Section 5 (46 Fed. Reg. 878). Our analysis has revealed that, for the most part, the state has satisfied its burden of demonstrating that the submitted plan is nondiscriminatory in purpose and effect. Concerns remain, however, over the manner in which the congressional district lines were drawn in a portion of south Texas. For that reason I must, on behalf of the Attorney General, interpose a Section 5 objection to the plan because of the manner in which it affects the districts described below.

- 2 -

The area of concern is the area comprising proposed Districts 15 and 27. This portion of South Texas experienced substantial growth during the past decade and the 1980 Census reveals that 67 percent of the persons residing in this area are Mexican Americans. Under the plan as drawn, however, this very significant Mexican-American concentration and growth area seems to be proportioned inequitably between these two districts so that while proposed District 15 is 80.4 percent Mexican American, proposed District 27 is only 52.9 percent Mexican American. We have received allegations that this method of dividing the area dilutes the voting strength of the Mexican-American community as it exists in this area; we are also aware that numerous alternate plans were presented which would not have this effect and that such alternatives were rejected. We are particularly troubled by information indicating that the future population growth in this area (a heavy majority of which likely will continue to be Mexican-American) is projected primarily in Hidalgo and Cameron counties. Thus the inclusion of both of these counties into District 15 may exacerbate the alleged "packing" of Mexican Americans into this district and effectively preclude Mexican-Americans from realizing their potential voting strength in District 27.


For these reasons, therefore, I am persuaded that Section 5 requires an objection. However, we will reconsider the objection if the state can present information demonstrating that our concerns are not well-founded. Likewise, we are available to give prompt attention to the matter if the State alters the plan to remedy the concerns described.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the described changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the implementation of the provisions of Senate Bill No. 1 (1981) legally unenforceable, because of the manner in which the Bill affects Districts 15 and 27.

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If you have any questions concerning this letter, please call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,


Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 3 which provides for the redistricting of the House of Representatives for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

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Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I hereby interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The house districting plan, however, does not accurately reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents opportunities in several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group it has been alleged that the state's plan, as it affects several areas within the state, fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, we have received allegations that in Dallas County the state's plan fragments the Mexican-American community on the west side of the City of Dallas in such a manner as to prevent the creation of a district where Mexican Americans could elect a candidate of their choice. In addition, the sweep of proposed District 100 through the center of the City of Dallas is alleged to dilute the voting strength of Dallas' black community; the contention is that the use of more compactly drawn districts would result in the creation of an additional district in

- 3 -

which black voters would be able to elect a candidate of their choice. It is also alleged that the odd shapes of proposed Districts 142 in Harris County and proposed District 117 in Bexar County serve to dilute the voting strength of the minority communities in these counties.

Another allegation that seems to have some merit concerns the creation of proposed District 68 which consists of Webb, Maverick, Kinney, Val Verde, Terrell, Pecos, Brewster and Presidio Counties. The existing district includes Zavala and Crockett Counties and the state's decision not to include Zavala and Crockett Counties in the proposed district significantly reduced the minority population percentage in the resulting new district. The state has not presented any evidence upon which we can reject the contention that the removal of the two counties was not done for the purpose of diluting minority voting strength.

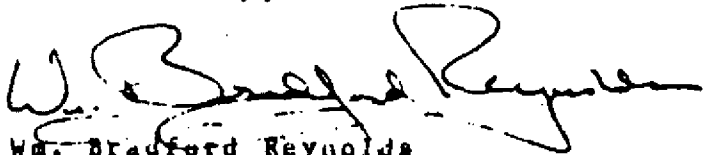
Finally, it has been alleged that the house plan also adversely affects the minority populations in Lubbock and El Paso Counties. Proposed District 83 in Lubbock County (existing District 75B) has suffered a significant reduction in the minority population percentage. It is alleged that this reduction is detrimental to the continued viability of the district as one in which the minority community could elect candidates of their choice to office. Regarding El Paso County, we have received allegations that the proposed plan does not fairly reflect the voting strength of the Mexican-American community, which has increased significantly over the past ten years.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our not being able to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficiently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas House of Representatives as authorized by the Legislative Redistricting Board's Plan Number 3 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Cabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely,


W. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas

U. S. Department of Justice
Office of Legislative Affairs



Office of the Assistant Attorney General

Washington, D.C. 20530

WBR:GWJ:PFH:RSB:bhq
166-012-3
D2634

25 JAN 1982

Honorable David Dean
Secretary of State
Elections Division
P. O. Box 12887
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to the Legislative Redistricting Board Plan Number 1 which provides for the redistricting of the Senate for the State of Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on December 1, 1981.

We have given careful consideration to the information that you have supplied. In addition, we have examined comments and information provided by other interested persons. As you know, under Section 5 of the Voting Rights Act, the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); see also, Procedures for the Administration of Section 5, 28 C.F.R. 51.39(e) (46 Fed. Reg. 878).

In this instance we have received a number of allegations that the plan discriminates against black and Mexican-American voters in certain parts of the state. In fact, your submission itself states:

It has come to my attention that the submitted Plan may not comply with the Voting Rights Act in all respects. There are claims that under the Plan there is a retrogression in opportunities for minority representation. In my opinion several of these claims are meritorious.

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Because of the number of questions which thus have been raised about the plan and because you have requested that we make a decision on this submission on the basis of the information now before us, we are unable to conclude that the state has satisfied its burden of demonstrating that the plan "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color or [membership in a language minority group]." 42 U.S.C. 1973c. Accordingly, on behalf of the Attorney General, I must interpose an objection to the plan.

At the outset, we note that in the ten-year period since the 1970 Census the state's population has increased by 27.1 percent. A significant portion of that increase was experienced in the minority community. This is especially true for the Mexican-American population which increased 44.96 percent since 1970.

The senate districting plan, however, does not appear to reflect this increase in the voting strength of the minority community. The net result seems to be a plan in which minorities enjoy no significant gains even though their percentage of the population has increased and the demography of the state presents several areas for recognizing the increased potential of the minority community. While we recognize there is no obligation to maximize the political impact of a minority group, it has been alleged, and not adequately refuted, that the state's plan, as it affects Bexar and Harris Counties, unnecessarily fragments minority concentrations in such a manner as to dilute the voting strength of the minority communities.

For example, in Bexar County, existing District 19 is underpopulated according to the 1980 Census and thus requires additional persons to meet one person-one vote standards. The proposed plan for this area, however, removes a substantial number of Mexican Americans from this district and adds a larger number of Anglos. The effect of this method of drawing the boundaries for

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proposed District 19 appears to be a dilution of Mexican-American voting strength. Regarding Harris County, we have received allegations that the senate districts unnecessarily fragment the minority community and the odd configurations of proposed Districts 6 and 13 lend support to that claim and raise substantial question as to whether the plan, as it affects Harris County, satisfies the requirements of Section 5.


Additionally, we have received allegations that the state used criteria for drawing senate districts in Harris County which differ from the criteria used in drawing senate districts in Dallas County. The claim is that in Harris County the state divided the minority communities among several districts so as to create districts in which minorities could have an "impact" even if they could not elect candidates of their choice. In Dallas County, the minority community apparently was treated as a "community of interest" and the plan seems to recognize the potential of that community to elect candidates of their choice to the senate. The state has presented no information to demonstrate why such divergent criteria were employed or to establish that the use of the seemingly inconsistent criteria does not have a discriminatory effect.

Since the state has failed to demonstrate that the plan is nondiscriminatory it is necessary to interpose an objection. We note, however, that the concerns that lead to this decision are based, in large part, on our being unable to reach the conclusion that the allegations of racial and ethnic discrimination have been sufficiently refuted on the basis of the information presently before us. Thus, if the state can present evidence which satisfactorily addresses the issues that have been raised by the complaints referred to above, we would be willing to reconsider this objection pursuant to the applicable provisions of the Procedures for the Administration of Section 5. See, 28 C.F.R. §51.44. If you desire, our staff is also available to meet with you and other state officials to discuss these concerns.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. However, until the objection is withdrawn or a judgment from the District of Columbia court is obtained, the effect of this objection is to render the redistricting of the Texas Senate as authorized by the Legislative Redistricting Board's Plan Number 1 legally unenforceable.

If you have any questions concerning this letter, please feel free to call Carl Gabel (202-724-8388), Director of the Section 5 Unit of the Voting Section.

Sincerely

A handwritten signature in black ink, appearing to read "Wm. Bradford Reynolds", is written over a horizontal line.

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Hon. Mark White
Attorney General
State of Texas



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 5 1990

Mr. Tom Harrison
Special Assistant for Elections
Elections Division
P. O. Box 12060
Austin, Texas 12060

Dear Mr. Harrison:

This refers to Chapter 632, S.B. No. 1379 (1989), which provides for the creation of fifteen additional judicial districts and the implementation schedule for the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 2, 1990.

We have given careful consideration to the information in your submission, including all information contained in your earlier submission of Chapter 632, which was withdrawn by the state pending a decision by the court en banc in League of United Latin American Citizens v. Clements, No. 90-8014 (5th Cir. Sept. 28, 1990) and we have considered the information in that opinion, as well as prior court opinions in that case. In addition, we have considered information from the Census, along with comments and information from other sources.

The changes consist of the establishment of fifteen additional district court judgeships, denominated as separate Judicial Districts. Each judgeship is elected at large in the area of the court's jurisdiction, which consists of one or more counties. Each judgeship is subject to the general requirement in Texas law that nomination for such position requires the obtaining of a majority of the vote in a political primary. Thirteen of these judgeships will have the same geographic jurisdiction as previously existing judgeships. In these cases, the election of judgeships by Judicial District operates as a numbered post requirement, eliminating any possibility of effective single-shot voting.

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Our review of the history of the numbered post feature in Texas elections indicates that its adoption and continued maintenance over the years appears calculated to place an additional limitation on the ability of minority voters to participate equally in the political process and elect candidates of their choice. In that regard, we note that it is commonly understood that numbered posts along with other features such as the use of a majority-vote requirement in the context of an at-large election system, have had a discriminatory impact on racial and ethnic minorities in those areas where minorities are a significant percentage of the population. Numerous federal court decisions have chronicled instances where these features have been adopted in Texas for clearly discriminatory motives, and where their use has produced the intended discriminatory effects. In addition, review of our records shows that the Attorney General has had to interpose objection under Section 5 on forty-one occasions to the adoption of numbered posts and on twenty-six occasions to the adoption of a majority-vote requirement by various Texas jurisdictions.

A review of more recent materials shows that it is commonly understood among Texas legislators that the discriminatory impact of these features is present in the election of judges. Indeed, the legislative session which produced Chapter 632 (1989) included an address by the Chief Justice of the Texas Supreme Court and legislative committee discussions in which the discriminatory impact of these features was acknowledged. It appears that the proposed method of electing the judicial positions presently before us, which incorporates the very features understood to be discriminatory, took the form it did primarily because of the inability of legislators to reach a consensus regarding an alternative method of selecting judges that would be fair to racial and ethnic minorities.

Accordingly, with regard to the additional judgeships in Dallas, Lubbock, and Tarrant Counties in particular, the evidence clearly indicates that the at-large method of election, even considered in isolation from the numbered post and majority-vote features, produces a discriminatory result proscribed under Section 2 of the Voting Rights Act, 42 U.S.C. 1973c.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, our guidelines provide that a submitted change may not be precleared if its implementation would lead to a clear violation of Section 2 of the Act. See 28 C.F.R. 51.55. Because we cannot conclude, as we must under the Voting Rights Act, that your burden has been sustained in this instance, and because our view is that use of the at-large election system with numbered

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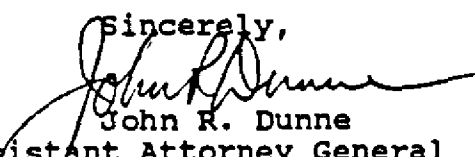
posts and majority vote results in a clear violation of Section 2, I must, on behalf of the Attorney General, interpose an objection to the voting changes occasioned by Chapter 632, S.B. No. 1379 (1989) and the implementation schedule for those districts.

In reaching this decision, we are not unmindful of the recent decision of the Fifth Circuit Court of Appeals in League of United Latin American Citizens v. Clements, No. 90-8014 (Sept. 28, 1990) ("LULAC") (en banc) which held that the Section 2 results standard is not applicable to judicial elections. The LULAC court, however, expressly recognized that "Section 5 of the Act applies to state judicial elections" (Slip. op. at 20) and until this matter is clarified further by the courts we see no basis for altering our Section 5 procedural requirements insofar as they relate to Section 2.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, you may request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the changes to which we have objected continue to be legally unenforceable and should not be implemented in the November 6, 1990, election. Clark v. Roemer, No. A-327 (U.S. Nov. 2, 1990) (copy attached). See also 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Texas plans to take concerning this matter. If you have any questions, you should call George Schneider (202-514-8696), Attorney in the Voting Section.

Sincerely,


John R. Dunne
Assistant Attorney General
Civil Rights Division



Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

NOV 20 1990

Mr. Tom Harrison
Special Assistant for Elections
Elections Division
P. O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Harrison:

This refers to our letter of November 5, 1990, in which the Attorney General interposed an objection under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c, to Chapter 632, S.B. No. 1379 (1989), which provides for the creation of fifteen additional elected judgeships and the implementation schedule for the State of Texas. Since that time it has come to our attention that our determination in that regard may need clarification so that state authorities will have a clearer basis upon which to conform their actions to the requirements of Section 5.

As you know, Chapter 632 created or authorized the creation of fifteen judgeships in ten of the distinct geographical districts used for the election of judges in Texas. The Attorney General's determination was made with respect to the statute as a whole but focused on certain elements of the electoral scheme which raised the concerns which led to our interposing the objection. Of course, our findings with respect to the purpose and effect of a particular voting feature well may vary depending on the demographic and historical context in which the features's implementation relative to given positions must be viewed. Thus, our consideration of each of the new judgeships contained in Chapter 632 in the light of these factors and in the context of existing racially polarized voting, along with the use of designated post and majority vote features, led us to conclude that the state had not met its burden under Section 5 of showing the absence of a discriminatory purpose with regard to a number of the new judgeships involved, namely, those in Dallas, Lubbock, Tarrant, and Victoria counties (i.e., Judicial Districts 363-364, and 371-377). In addition, we concluded that, even aside from

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the designated post and majority-vote features, the at-large election method for the additional judgeships in Dallas, Lubbock, and Tarrant Counties, produced discriminatory results proscribed by Section 2 of the Voting Rights Act, 42 U.S.C. 1973c, and our earlier letter expressly noted that these judgeships were not entitled to preclearance for this additional reason.

Consequently, while our letter does say, in broad terms, that the Attorney General's objection was interposed to "the voting changes occasioned by Chapter 632," the concerns that led to our objection involved only the additional judgeships noted above. Of course, it is within the province of state authorities to decide whether, under state law, the other provisions of Chapter 632 may be enforced in view of the Attorney General's decision, but we wish to make clear our view that there is no Section 5 bar to enforcement of the additional judgeships in Dimmit, Maverick, Zavala, Collin, Denton, Williamson, Anderson, Cherokee, and Hidalgo Counties (i.e., Judicial Districts 365-370).

If you have any questions regarding this matter, please call George Schneider (202-514-8696), Attorney in the Voting Section.

Sincerely,



John R. Dunne
Assistant Attorney General
Civil Rights Division



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

November 12, 1991

Honorable John Hannah, Jr.
Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Mr. Secretary:

This refers to Chapter No. 899 (1991), which provides the 1991 redistricting plan for the House of Representatives of the State of Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your initial submission on September 12, 1991; supplemental information was received on September 17 and 23, October 29, and November 1, 4, and 8, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. At the outset, we note that the state waited nearly three months before seeking the requisite preclearance under Section 5 for the House redistricting plan. Although we have found that your initial submission was not complete, in an effort to expedite our review, as you requested, we have sought additional information informally and we are providing a determination within the 60-day period following your initial submission.

The Voting Rights Act requires that the submitting authority demonstrate that the proposed change neither has a discriminatory purpose nor a discriminatory effect. Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In addition, preclearance may not be obtained if implementation of the change would clearly violate Section 2 of the Act. 28 C.F.R. 51.55. In the case of a statewide redistricting, Section 5 requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of each of the legislative choices that were made in adopting the particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R. 51.52(a), 51.55, 51.56. For example, we cannot preclear those portions of a plan where the legislature has deferred to the interests of incumbents

while refusing to accommodate the community of interest shared by insular minorities. See, e.g., Garza v. Los Angeles County, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 111 S. Ct. 681 (1991); Ketchum v. Byrne, 740 F.2d 1398, 1408-09 (7th Cir. 1984), cert. denied, 471 U.S. 1135 (1985). Such concerns are frequently related to the unnecessary fragmentation of minority communities or the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the demographic changes which compelled the particular jurisdiction's need to redistrict (id.). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racially or ethnically proportional results.

Turning now to the instant submission, the state House is composed of 150 members elected from single-member districts. Accordingly, the House plan required redistricting decisions at a substantially different scale than in Texas' other statewide plans currently undergoing Section 5 review, which contain far fewer districts. In addition, the House plan was adopted several months earlier than those other statewide redistricting plans.

In terms of the state's demography, one of the most significant changes in the past decade has been the increase in the Hispanic population. From 1980 to 1990, the Hispanic share of the state's population increased from about 21 percent to 26 percent while the black share of the population remained at about 12 percent. For statewide redistricting purposes, significant Hispanic population concentrations are located in south and southwest Texas and in the urban areas of San Antonio (Bexar County), Houston (Harris County), Dallas (Dallas County) and Fort Worth (Tarrant County). There are significant black population concentrations in Houston, Dallas and Fort Worth.

There are 20 Hispanic and 13 black state representatives at this time. Most have been elected from districts in which potential minority voters predominate. Nineteen of the 20 Hispanic representatives serve districts that are over 50 percent Hispanic in voting age population and over 40 percent Hispanic in voter registration. Of the 13 black representatives, eight serve districts that are over 50 percent black in voting age population; the remainder serve districts in which the combined black plus Hispanic voting age populations comprise at least 46 percent of the district. This election history, court findings in voting rights cases, and other information in your submission have led us to examine the 1991 redistricting plan in light of the pattern of racially polarized voting that appears generally to characterize legislative elections in the state.

In addition, your submission notes that both the current and the proposed House plans are drawn (in part) by assigning a whole number of districts to the larger urban counties. Thus, the plans essentially include severable "sub-districting plans" within the overall plan.

With this background in mind, our analysis shows that the proposed Texas House redistricting plan exhibits a pattern of districting decisions that appears to minimize Hispanic voting strength through packing or fragmenting Hispanic population concentrations unnecessarily.

El Paso County, one of the most populous and heavily Hispanic counties in the state, was apportioned five districts. Two of the districts are well over 80 percent Hispanic in voting age population and Hispanics have chosen to be represented by Hispanic legislators. Because of demographic changes in the past decade, it appears that an effective Hispanic registration majority was emerging in the district located between those two districts, which currently has a white incumbent. The plan, however, reduces that district's Hispanic registration by about four percentage points. The state has offered no adequate explanation for this approach as alternatives were available that would not reduce the Hispanic population in this district.

In south Texas (the area south and southwest of Bexar County, and north of Cameron and Hidalgo Counties), the state chose to draw the district lines generally in an east-west manner. This has the effect of overconcentrating Hispanics in the southernmost districts. At the same time, the two districts (31 and 44) in the northern portion of this area have white voting age population and registration majorities. We understand that it is generally recognized that a north-south configuration would produce an additional district with a significant electoral opportunity for minority voters, and it appears that this option was rejected in large part to protect white incumbent legislators. Similarly, while five districts in Cameron and Hidalgo Counties have substantial Hispanic populations, the Hispanic share of the voting age population and registration in the one district with a white incumbent was reduced. It appears that the asserted interest in keeping the City of Harlingen entirely within this district could have been satisfied without the proposed reduction in the Hispanic share of the population in the district.

In Bexar County, the state decided to increase the number of districts from ten to eleven. While the Hispanic share of the county's population has increased from about 47 percent to almost 50 percent, the plan appears to reduce Hispanic voting strength by packing Hispanics in District 118, which is over 77 percent Hispanic in voting age population, while reducing unnecessarily

the Hispanic share of the voting age population in adjoining District 117 (from 54.8% to 50.9%). Particularly given the fact that last decade one of the state's House redistricting plans for Bexar County suffered from the same defect of packing districts with Hispanic population, Terrazas v. Clements, 537 F. Supp. 514, 541-542 (N.D. Tex. 1982), the state has not adequately explained this proposed configuration.

In Dallas County, the decision apparently was made late in the legislative process to reduce from 17 to 16 the number of districts apportioned to the county. The proposed plan includes five districts in which blacks and Hispanics combined comprise over 60 percent of the voting age population. In four of those districts blacks comprise between 46 and 55 percent of the voting age population and in the fifth district Hispanics comprise 57 percent of the voting age population. The plan appears fairly to reflect black voting strength in the county. For Hispanics, however, we are unable to reach the same conclusion. Our analysis indicates that the plan fragments the growing Hispanic population concentrations in the City of Dallas resulting in a significant reduction in the electoral opportunities for Hispanics in the existing district in that area. This fragmentation does not appear to have been necessary to create other districts in which Hispanics or blacks would have the potential to elect their chosen representatives. Indeed, it appears that the legislature was aware that relatively compact districts may be centered on the Hispanic concentrations, thus, more fairly recognizing the fast growing Hispanic population in Dallas County without adversely affecting the four districts with substantial black populations.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained with regard to the redistricting here under review. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plan for the State House of Representatives because of the concerns relating to the proposed configurations for the areas discussed above.

Of course, as provided by Section 5, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1991 House redistricting plan has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group and, as you are aware, the State of Texas has filed a lawsuit in which it appears to seek such relief. Texas v. United States, No. 91-2383 (PMW U.S.C.A., SS, MB) (D.D.C.). In addition, the state may request that the Attorney General reconsider the objection.

Until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting